IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

R.S.A. No. 4364 of 2002

Date of Decision: 25.9.2006

The Municipal Committee Rajpura through its Executive Officer

...Appellant.

Versus

Devi Dawala Ganeshwala (Durga Mandir), Old Rajpura, Tehsil Rajpura, District Patiala through its Mohitmim Sant Lal (since dead) represented by his legal representative-respondent No.2 and others

...Respondents.

CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.

PRESENT: Mr. G.S.Ghuman, Advocate for the appellant.

None for the respondents.

AJAY KUMAR MITTAL, J.

This regular second appeal filed by the defendants is directed against the judgment and decree dated 26.4.2002 passed by the lower appellate court whereby the judgment and decree dated 28.10.1998 passed by the trial court decreeing the suit of the plaintiffs has been upheld.

The facts as narrated in the plaint are that plaintiff No.1 is the Hindu Religious and Charitable Institution and is being managed by plaintiff No.2 in the capacity of Mohitmim-cum-Manager. It is pleaded that plaintiff No.3 is the owner of the property in dispute. Plaintiff No.1 is running a High School and having a regular Management Committee. The plaintiffs are also having a big shopping complex and are shown as owners in the house

tax assessment register of the defendants and the site plan has been sanctioned by the defendants. It is further pleaded that plaintiff No.2 has been managing the affairs of plaintiff No.1 and Pujari has also been employed. It is further pleaded that the defendants have no right, title or interest in the property in dispute and have no right to interfere in the peaceful possession of the plaintiffs. The defendants are threatening to interfere and to demolish the construction over the property in dispute.

Upon notice, the defendants filed written statement alleging that the plaintiffs have filed a false and frivolous suit against the defendants and as such the defendants are entitled to the compensatory cost under Section 35-A CPC. It was further pleaded that no notice under Section 49 of the Punjab Municipal Act was served upon the defendants and prayer for dismissal of the suit was made.

On the pleadings of the parties, the following issues were framed by the trial court:-

"1. Whether the plaintiff is in possession of the property in dispute? OPP
2. Whether the plaintiff is entitled to the injunction prayed for? OPP
3. Whether the defendants are owners in possession of the property in dispute? OPD
4. Whether the defendants are entitled to compensatory costs u/s 35A CPC? OPD
5. Whether the suit is liable to be dismissed for want of service of notice on the defendants? OPD
6. Relief."

The trial court took issues No.1 and 2 together being interconnected and after appreciation of evidence came to the conclusion

that the plaintiffs are owners in possession of the land in dispute and the defendants have miserably failed to establish/rebutt the claim of the plaintiffs and decided both the issues in favour of the plaintiffs. Accordingly, the suit filed by the plaintiffs was decreed vide judgment and decree dated 28.10.1998. On appeal, the lower appellate court while affirming the findings recorded by the trial court, dismissed the appeal vide judgment and decree dated 26.4.2002.

Learned counsel for the appellant has made efforts to reappreciate the findings recorded by the courts below. However, he could not pin point any error in the concurrent findings of fact recorded by the courts below which may call for interference by this Court in the regular second appeal. No question of law, much less a substantial question of law arises in this appeal.

In view of the above, finding no merit in this appeal, the same is hereby dismissed.

September 25, 2006 **(AJAY KUMAR MITTAL)**
gbs **JUDGE**